

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SHAWN STEELE)	
Claimant)	
VS.)	
)	Docket No. 1,000,410
THE HOME DEPOT)	
Respondent)	
)	
AND)	
)	
SEDGWICK CLAIMS MANAGEMENT)	
SERVICES INC.)	
Insurance Carrier)	

ORDER

The respondent and its insurance carrier appealed Administrative Law Judge John D. Clark's July 9, 2002 preliminary hearing Order.

ISSUES

Judge Clark ordered the respondent and its insurance carrier to continue providing the claimant medical treatment with Dr. Bernard Hearon. The issues on this appeal are:

- (1) Did the claimant sustain an intervening accident and injury?
- (2) Is the claimant's present need for medical treatment related to his original work-related injury?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Appeals Board finds the preliminary hearing Order should be reversed and benefits denied.

On January 5, 2001, the claimant injured his left shoulder at work. The respondent provided authorized medical treatment, including surgery, with Dr. Bernard Hearon. A few weeks after that surgery, the claimant slipped and fell in an icy parking lot after leaving a restaurant. The claimant felt an immediate onset of excruciating pain. The claimant returned to Dr. Hearon, who “recommended a left shoulder arthrogram to rule out recurrent rotator cuff tear.”¹ The history given to Dr. Hearon by claimant was that “His shoulder pain significantly increased postoperatively following a slip and fall on the ice.”² In his office notes, Dr. Hearon repeatedly refers to claimant’s present condition as a “re-injury.”

An accidental injury is compensable under the Workers Compensation Act even where the accident only serves to aggravate a preexisting condition.³ The test is not whether the accident causes the condition, but whether the accident aggravates or accelerates the condition.⁴ When the accidental injury is shown to arise out of and in the course of employment, every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of the primary injury.⁵ An injury is not compensable, however, where the worsening or new injury would have occurred even absent the accidental injury or where the injury is shown to have been produced by an independent intervening cause.⁶

The Appeals Board finds that the claimant sustained an intervening injury. His slip and fall injury or re-injury worsened his condition. This worsened condition and claimant’s present need for medical treatment are due to the intervening accidental injury. That intervening accidental injury was not work-related. Therefore, benefits from the date of the intervening injury forward, are denied.

¹ P.H. Trans., Resp. Ex. 1.

² P.H. Trans., Resp. Ex. 1.

³ *Odell v. Unified School District*, 206 Kan. 752, 481 P.2d 974 (1971).

⁴ *Woodward v. Beech Aircraft Corp.*, 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

⁵ *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972).

⁶ *Nance v. Harvey County*, 263 Kan. 542, 952 P.2d 411 (1997); *Stockman v. Goodyear Tire & Rubber Co.*, 211 Kan. 260, 505 P.2d 697 (1973).

As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.⁷

WHEREFORE, the Appeals Board reverses the Order dated July 9, 2002, entered by Administrative Law Judge John D. Clark.

IT IS SO ORDERED.

Dated this _____ day of November 2002.

BOARD MEMBER

c: Clifford K. Stubbs Attorney for Respondent and Insurance Carrier
Gerard C. Scott, Attorney for Claimant
John D. Clark, Administrative Law Judge
Director, Division of Workers Compensation

⁷ K.S.A. 44-534a(a)(2).